

Dated

(1) **FRESCA GROUP LIMITED**

- and -

(2)

Licence Agreement

Table of contents

Clause heading and number

Page number

1.	DEFINITIONS AND INTERPRETATION.....	2
2.	SCOPE	3
3.	LICENCE TO USE.....	3
4.	HEAD LICENCE REQUIREMENTS.....	3
5.	FEEES AND PAYMENT	5
6.	EXCLUSIVITY	5
7.	CONFIDENTIALITY.....	6
8.	FRESCA'S OBLIGATION.....	6
9.	ADDITIONAL GROWER'S OBLIGATIONS.....	7
10.	TERM AND TERMINATION	7
11.	FORCE MAJEURE	7
12.	NOTICES.....	8
13.	HEADINGS	8
14.	SEVERABILITY	8
15.	ENTIRE AGREEMENT.....	8
16.	AMENDMENT	9
17.	GOVERNING LAW	9
18.	CESSION	9
	SIGNATURE PAGE.....	10

THIS AGREEMENT is made the day of

BETWEEN:

- (1) **FRESCA GROUP LIMITED** (company no. 05307204 England) whose principal place of business is at Transfesa Road, Paddock Wood, Kent TN12 6UT ("**FRESCA**")
- (2) [.....] **LIMITED** (company no. XXX South Africa) whose principal place of business and registered office is at [.....] ("**GROWER**")

COMMERCIAL TERMS

Commencement Date:

Initial Licence Fee: 0

Annual Licence Fee: 0

Tree Royalty: \$1 Invoiced with tree cost

Per Hectare Royalty: YR0- 1 zero fee, YR2 (3rd leaf) \$750.00 per hectare. YR3 onwards \$950.00 per hectare

Fruit Selections:

Designated Site:

Minimum size: [.....] hectares

Territory: South Africa / Zimbabwe

Other Special Terms:

NOW IT IS HEREBY AGREED as follows:

PART A: PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the definitions and provisions set out in the Commercial Terms shall apply. In addition, unless the context otherwise requires the following words and expressions shall have the following meanings:

“Agreement” means this licence agreement between Fresca and the Grower, consisting of these terms and conditions;

“Annual Licence Date” means the 25th of March of every year;

“Confidential Information” means any information of whatever nature, which has been or may be obtained by either of the parties from the other, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, market, specialist fruit-growing information, details of new fruit trials, customer interest and pricing with wholesalers and supermarkets; scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas; analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;

“Fruit” means fruit grown from Zaiger Selections;

“Intellectual Property Rights” means all present and future intellectual property rights used or embodied in or in connection with the Zaiger Selections, and other rights which may in the future be based thereon;

“Material” means stones, seeds, pollen, bud wood, propagation materials, root stock or cuttings that can be used for the propagation of the Zaiger Selections;

“Restricted Acts” Means, in respect of propagating material of the Zaiger Selections, to:-

- i. produce or reproduce Material;
- ii. condition for the purpose of propagation;
- iii. offer Material for sale;
- iv. sell and carry out other marketing;
- v. import into the Territory;
- vi. stock Material for any of the purposes mentioned above; or
- vii. carry out any other act that may be a restricted act

from time to time by virtue of the South African (or Zimbabwean, as the case may be) Plant Varieties Act.

"Trees"	means
"Zaiger Genetics"	means Zaiger Genetics Inc, a company incorporated under the laws of California with its principal place of business being 1219 Grimes Avenue, Modesto California, USA;
"Zaiger Selections"	means all those Zaiger Genetics Interspecific (IS) Plums, IS Apricots, Apriums, Nectaplums, Peacotums (and any other genetic interspecifics excluding only cherry interspecifics with a majority of cherry in the selection and that resemble a cherry) released by Zaiger Genetics AND made available by Fresca to the Grower hereunder from time to time.

2. SCOPE

This Agreement sets out the basis upon which Fresca licences the Grower to use the Zaiger Selections for the cultivation of stone fruit. Such use is subject to the Grower's compliance with the terms and conditions of this Agreement as a whole. This Agreement replaces all other agreements relating to Zaiger selections or varieties as between Fresca and the Grower.

3. LICENCE TO USE

- 3.1 Subject to the Grower's compliance with this Agreement, the Grower is hereby granted a non-exclusive, non-transferable licence to use the Zaiger Selections to cultivate stone fruit within the Territory at the Designated Site from the Effective Date and thereafter during the period of this Agreement.
- 3.2 This Agreement only permits the use of the Zaiger Selections by the Grower on the Designated Site.
- 3.3 The Grower is responsible for the planting and cultivation of the Zaiger Selections.
- 3.4 Fresca shall not be liable for any loss or damage whether direct or consequential arising from the cultivation of the Zaiger Selections by the Grower.
- 3.5 The Grower shall not permit any third party to use the Zaiger Selections in any manner whatsoever without the prior written consent of Fresca. The Grower may only use the Zaiger Selections to cultivate stone fruit for his own financial benefit.

4. HEAD LICENCE REQUIREMENTS

- 4.1 Fresca shall not be liable for any loss or damage whether direct or consequential arising from the cultivation of any of the Zaiger Selections by the Grower.
- 4.2 The Grower may only use the Zaiger Selections to cultivate stone fruit for his sale. The Grower shall neither itself, nor permit any third party to, propagate (including the use of pollen), reproduce or otherwise carry out any Restricted Acts in respect of the Zaiger Selections in any manner whatsoever without the prior written consent of Fresca.
- 4.3 The Grower may not provide information relating to the development or propagation of the Zaiger Selections, nor loan, sell, rent, assign, lease, sub-licence, transfer, move to locations outside the Grower's designated growing areas or otherwise deal with any Trees or Material without Fresca's prior written consent.

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- 4.4 The Grower undertakes not to modify the whole or any part of the Zaiger Selections in any way whatsoever nor permit the whole or any part thereof to be combined with or become incorporated in any other plant material/variety without Fresca's prior written consent.
- 4.5 The Grower acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Zaiger Selections are and will remain the sole property of Zaiger Genetics or Fresca and that Fresca is the exclusive licensee thereof in the Territory.
- 4.6 The Grower shall not question or dispute the ownership of such rights at any time during the continuation of the Agreement or thereafter.
- 4.7 Fresca does not guarantee that the Trees, Material or fruit of the Zaiger Selections are fit for the purpose of its purchase or that they are free from defects.
- 4.8 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, express or implied, as to the condition, quality, performance, merchantability or fitness for purpose of the Trees, Material or fruit of the Zaiger Selections shall be assumed by Fresca, and, except as expressly provided for in this Agreement all such warranties, conditions, undertakings and terms are (but solely to the extent permitted by law) hereby excluded.
- 4.9 Notwithstanding any other provision of this Agreement, the Grower by accepting this Agreement confirms that in no event shall Fresca be liable to the Grower for any incidental, special, indirect or consequential loss of whatever nature, including but not limited to loss of use and/or loss of profits and/or loss howsoever caused, whether occurring in contract, delict, negligence or otherwise.
- 4.10 The Grower acknowledges that the Grower is only licensed to grow, and then harvest fruit from, Trees in accordance with the express terms of this Agreement and has no other rights in or to the Zaiger Selections.
- 4.11 The Grower Undertakes:
- 4.11.1 to acquire Trees solely from nurseries licensed by Fresca, currently same being Stargrow Nursery and Rosenhof Nursery;
- 4.11.2 not to undertake, nor to permit others to undertake any of the Restricted Acts in relation to the Zaiger Selections in any manner whatsoever;
- 4.11.3 to indemnify Fresca and/or its head-licensor against any claims of infringement of any intellectual property right of any third party in respect of the Zaiger Selections to the extent that such infringement or alleged infringement is the result of misuse by the Grower of the Trees or its fruit or Material contrary to this Agreement, including but not limited to, the licence to use granted hereunder.
- 4.11.4 to report to Fresca any mutations that may arise within his orchards and the Grower accepts and agrees that such mutations are the property of Fresca and/or Zaiger Genetics and it may be commercialised by them without restrictions or obligation to pay any compensation to the Grower;
- 4.11.5 to disclose this Agreement to his successor-in-title and the registered owner of the Designated Site (if either is not the Grower), and require that the successor-in-title of his farming operations on that land takes, with Fresca's prior written consent, assignment of the Grower's rights and title in

and to this Agreement or enter into an equivalent agreement with Fresca and to ensure that the successors-in-title of said registered owner of the Designated Site is familiar with the terms of this Agreement.

- 4.11.6 In the event that Fresca no longer has the rights for the commercialisation of the Zaiger Selections for whatever reason then this licence is intended to survive and be binding on Fresca's Licensor or his or their successor in title.

5. FEES AND PAYMENT

- 5.1 The Grower shall pay to Fresca:

5.1.1 The grower shall purchase the trees from the designated Nursery. The tree price will include a royalty payable at the time of tree purchase.

5.1.2 the Per Hectare Royalty per year for every hectare or portion of a hectare of the Designated Site planted with any Zaiger Selections in their third leaf from initial planting on the Designated Site, or second leaf from top-working.

This royalty is payable in arrear on every Annual Licence Date for as long as the Zaiger Selections are planted on the Designated Site. The amount payable will be converted to South African Rand at the spot rate of the Annual Licence Date.

The Grower shall furnish Fresca with a bank guaranteed cheque or bank guarantee, acceptable to Fresca, or pay a cash deposit, the amount of which Fresca will determine in its discretion as being the Grower's potential liability in terms of this clause 5.1.1 on the following Annual Licence Date, before the 1st of October of every year to secure the amount payable in terms of this clause 5.1.1.

The Grower confirms that the amount payable in terms of this clause 5.1.1 shall be calculated on the Minimum Size in the event that his actual hectares planted with Zaiger Selections are less than the said minimum.

- 5.2 Any dispute regarding the amount of the Annual Licence Fee or Per Hectare Royalty payable will be referred to Fresca's auditors for determination and the parties confirm that the auditors' decision in this regard will be final and binding on the parties.
- 5.3 The Grower is not entitled to withhold, for whatsoever reason, payment of the fees referred to in this clause 5.
- 5.4 All fees and other charges are given exclusive of any VAT imposed by law which shall be added thereto and paid by the Grower at the rate and in the manner prescribed for time being by law.

6. EXCLUSIVITY

The Grower undertakes that, save with the prior written consent of Fresca:

- 6.1 all Fruit grown either (a) by it, or (b) on the Designated Site shall first be offered to Fresca for sale, such offer to be made by the Grower to Fresca weekly, 14 days in advance of harvesting, during each week of the season during which Fruit may be cropped;

- 6.2 it will not unreasonably refuse an offer by the Grower to purchase such Fruit where such offer reasonably represents the market price for sale in the United Kingdom at the time when taking into account shipment dates, quantities, market conditions in the UK, quality, supply and other material factors;
- 6.3 it will not actively to market to buyers in the United Kingdom, either via offering or giving site visits to UK-based buyers to the Grower's Designated Sites, or via direct mail (including email), internet or other marketing approaches which may be received in the United Kingdom, or via the establishment of a sales agency or representative in the United Kingdom for the purposes of selling Fruit.

7. CONFIDENTIALITY

- 7.1 The parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.
- 7.2 The parties shall prevent disclosure of the Confidential Information, except as may be
- 7.3 Within 60 (Sixty) days after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 7.4 It is recorded that the following information will, for the purpose of this Agreement, not be considered to be Confidential Information:
- 7.4.1 information known to either of the parties prior to the date that it was received from the other party; or
- 7.4.2 information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or
- 7.4.3 information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such information; or
- 7.4.4 information which either of the parties, in writing, authorises the other to disclose.

8. FRESCA'S OBLIGATION

- 8.1 Fresca shall:
- 8.1.1 keep the Grower informed, when requested by the Grower, of the total number of hectares of commercial plantings of Zaiger Selections planted and planned to be planted by growers in South Africa, within a reasonable time after receipt of such request;
- 8.1.2 provide the Grower, when requested by the Grower, with information relating to the Zaiger Selections, within a reasonable time after receipt of such request, to the extent Fresca may determine in its discretion;
- 8.1.3 advise the Grower on the Zaiger Selections that in Fresca's opinion will meet the Grower's specific requirements;

- 8.1.4 in its discretion (and subject to any legal controls) attempt to limit the total hectares of any one Zaiger Selection or group of Zaiger Selections to a level that will avoid in the view of Fresca overproduction thereof.

9. ADDITIONAL GROWER'S OBLIGATIONS

The Grower at all times during the period of this Agreement agrees:

- 9.1 to produce high quality stone fruit from the Zaiger Selections on the Designated Site;
- 9.2 to plant Zaiger Selections on at least the Minimum Size of the Designated Site within one year from the Effective Date;
- 9.3 to adhere to the Grower's proposed planting schedule relating to the planting of Zaiger Selections on the Designated Site and attached hereto as Annexure "B";

10. TERM AND TERMINATION

- 10.1 This Agreement commences on the Effective Date and continues for the Term unless or until terminated as provided in this clause.
- 10.2 Fresca may terminate this Agreement forthwith if:
- 10.2.1 the Grower breaches any term of this Agreement and fails to remedy same within 10 (TEN) days of the date of formal notification of such breach and/or;
- 10.2.2 the Grower fails to pay any fees or charges in accordance with this Agreement and/or;
- 10.2.3 the Grower does or allows to be done anything which may reasonably be considered by Fresca to jeopardise any right of Fresca and/or Zaiger Genetics in the Zaiger Selections and or any part thereof, including but not limited to, if the Grower shall make or allow to be made any unauthorised use of the Zaiger Selections, without the prior written consent of Fresca.
- 10.3 This Agreement may be terminated by either party with immediate effect by written notice to the other if the other shall become bankrupt or insolvent or enter into any scheme of administration with its creditors or enter into judicial management or liquidation, take any action for voluntary winding up other than for the purpose of a solvent reconstruction or amalgamation, or cease to carry on business.
- 10.4 Unless otherwise agreed to in writing by Fresca, upon termination, howsoever caused, the Grower shall be obliged to immediately cease using the Zaiger Selections, to remove all Zaiger Selections (including Trees) from the Designated Site and deal with it in the manner prescribed by Fresca within 60 (sixty) days of the date of such termination. The Grower must also remove all information relating to the Zaiger Selections from any computer under his control and return all Confidential Information and Material to Fresca forthwith. Grower shall, if requested by Fresca, certify that it has complied with this sub-clause.
- 10.5 The following provisions shall survive any termination of this Agreement: 1; 3.4; 3.5; 4.1; 4.2 to 4.9; 4.11; 6; 10; 12 to 18.

11. FORCE MAJEURE

In the event that either party is unable to perform any obligation hereunder due to any circumstances beyond its control, including the action, intervention, or decree of any Government, and such circumstances are not caused by fault of a party, such party shall give prompt notice thereof to the other party and shall have no liability for any loss, damage, injury or expense (whether direct or consequential) suffered by the other party due to the affected performance of its obligations. Such party shall use shall reasonable efforts to avoid or overcome the cause affecting performance and shall fulfil all outstanding obligations as soon as it becomes practical to do so.

12. NOTICES

- 12.1 The parties shall use the addresses set out in page 1 of this Agreement for all purposes under this Agreement, whether in respect of the payment of money, the service or delivery of Court process, notices or other documents or all other communications.
- 12.2 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if it is in writing, but, where, in terms of this Agreement, any communication is required to be in writing, the term "writing" will include communications by telefax.
- 12.3 Any party may by written notice to the other party change its address referred to in 12.1 above to another address (but not one constituted as simply a post office box address). The change will become effective on the fifth business day from the deemed receipt of the notice by the addressee.
- 12.4 Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its address and will be deemed to have been received on the fifth business day after posting.
- 12.5 Any notice to a party delivered by hand to a responsible person during ordinary business hours at its address will be deemed to have been received on the day of delivery.
- 12.6 Any notice to a party sent by telefax to its chosen telefax, will be deemed to have been provided, unless the contrary is proved, immediately upon issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice.
- 12.7 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party will be an adequate written notice for communication to it notwithstanding that it was not sent to or delivered as its chosen address.

13. HEADINGS

Headings have been included for convenience only and shall not be used in construing any provisions herein.

14. SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

15. ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any and all previous representations, arrangements, understandings and/or agreements (whether written or oral) between the parties relating to the subject matter of this Agreement.
- 15.2 Each of the parties acknowledges and agrees that, in entering into this Agreement, it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.
- 15.3 Each of the parties further acknowledges and agrees that the only remedy available to it under or in respect of this Agreement shall be for breach of contract under the terms of this Agreement.
- 15.4 Nothing in this Agreement shall operate so as to exclude or limit any liability for:
- 15.4.1 fraud; or
- 15.4.2 any misrepresentations as to a fundamental matter, including as to a matter fundamental to a party's liability to perform its obligations under this Agreement.

16. **AMENDMENT**

Any amendment to this Agreement must be in writing, referenced hereto and signed by the duly authorised representatives of both parties.

17. **GOVERNING LAW**

The construction, validity and performance of this Agreement shall be governed by the laws of England.

18. **CESSION**

Fresca is entitled to assign its right title and interest in and to this Agreement to a third party.

SIGNATURE PAGE

SIGNED by
 for and on behalf of **Fresca Group Limited** (Signature)
 (Date)

WITNESS:
 Signature
 Name
 Address

 Occupation
 (PLEASE COMPLETE IN CAPITALS)

SIGNED by
 for and on behalf of [] (Signature)
 (Date)

WITNESS:
 Signature
 Name
 Address

 Occupation
 (PLEASE COMPLETE IN CAPITALS)